

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

KAREN HAUGEN, P.L., a minor  
child, and MAY LANSDEN,

Plaintiffs,

v.

MOLLY FIELDS, CITY OF  
UNION GAP, LARRY WORDEN,  
ROBERT ALMEIDA, SHAWN  
JAMES, ED LEVESQUE, L.  
McKINLEY, H. RIVERA, CHASE  
KELLOGG, and JOHN DOES one  
through five,

Defendants.

NO. CV-05-3109-RHW

**ORDER DENYING MOTION  
FOR RECONSIDERATION**

Before the Court is Plaintiffs' Motion for Reconsideration of Order on Summary Judgment Motions (Ct. Rec. 88). The motion was heard without oral argument.

**DISCUSSION**

"[A] motion for reconsideration should not be granted, absent highly unusual circumstances, unless the district court is presented with newly discovered evidence, committed clear error, or if there is an intervening change in the controlling law." *Kona Enterprises, Inc. v. Estate of Bishop*, 229 F.3d 877, 890 (9th Cir. 2000) (quoting *389 Orange Street Partners v. Arnold*, 179 F.3d 656, 665 (9th Cir. 1999)). It is considered an "extraordinary remedy, to be used sparingly in the interests of finality and conservation of judicial resources." *Id.* A motion under Rule 59(e) "may *not* be used to raise arguments or present evidence for the

1 first time when they could reasonably have been raised earlier in the litigation.” *Id.*  
2 (emphasis in original).

3 Plaintiffs asserts that the Court committed clear error when it ruled that  
4 Defendant Fields is entitled to absolute immunity in regard to any claim that she  
5 violated Plaintiffs’ constitutional rights when she assisted in the execution of the  
6 court-issued pickup order. In so ruling, the Court relied on *Coverdell v. Dep’t of*  
7 *Soc. and Health Servs.*, 834 F.2d 758 (9<sup>th</sup> Cir. 1987). Plaintiffs argue that  
8 *Coverdell* is no longer good law. It is true that *Miller v. Gammie*, 335 F.3d 889,  
9 897 (9<sup>th</sup> Cir. 2003) (en banc) overruled the “in connection with” test and instead  
10 applied a functional test. In doing so, the Circuit rejected the *reasoning* of the  
11 earlier cases involving immunity, but did not necessary reject the outcome of the  
12 earlier cases. *See Sadoski v. Mosley*, 435 F.3d 1076, 1080 (9<sup>th</sup> Cir. 2006), J. Gould,  
13 concurring, (suggesting that a corrections official who executes a valid court order  
14 is entitled to absolute immunity from liability based on the fact of a prisoner’s  
15 incarceration, and relying, in part, on *Coverdell*). Even so, the Court agrees with  
16 Plaintiff that *Miller* requires the Court to re-examine its reasoning in its previous  
17 order.

18 In *Miller*, the Ninth Circuit held that to enjoy absolute immunity for a  
19 particular action, the official must be performing a duty functionally comparable to  
20 one for which officials were rendered immune at common law. *Miller*, 335 F.3d at  
21 897. Thus, when the social worker is initiating a prosecution and presenting  
22 evidence the social worker is absolutely immune from § 1983 claims. When a  
23 prosecutor is performing investigatory or administrative functions, or is essentially  
24 functioning as a police officer, he or she is entitled only to qualified immunity.  
25 *Broam v. Bogan*, 320 F.3d 1023, 1028 (9<sup>th</sup> Cir. 2003); *see also Swift v. California*,  
26 384 F.3d 1184, 1186 (9<sup>th</sup> Cir. 2004) (holding that parole officers are not absolutely  
27 immune from suits arising from conduct distinct from the decision to grant, deny,  
28 or revoke parole).

1 Even if the Court erred in holding that Defendant Fields is entitled to  
2 absolute immunity for her role in executing the court order, this does not end the  
3 inquiry, however, because Defendant Fields may be entitled to qualified immunity.  
4 In analyzing a qualified immunity defense, the Court must first determine whether  
5 a Constitutional right would have been violated on the facts alleged, taken in the  
6 light most favorable to the party asserting the injury. *Saucier v. Katz*, 533 U.S.  
7 194, 201 (2001). If a violation of a Constitutional right is found, the Court must  
8 then ask whether the right was clearly established when viewed in the specific  
9 context of the case. *Id.* “The relevant dispositive inquiry in determining whether a  
10 right is clearly established is whether it would be clear to a reasonable officer that  
11 his conduct was unlawful in the situation he confronted.” *Id.* An official’s claim  
12 of qualified immunity will be defeated if, “in the light of pre-existing law,” the  
13 unlawfulness of her conduct was “apparent.” *Grossman v. City of Portland*, 33  
14 F.3d 1200, 1208 (9<sup>th</sup> Cir. 1994).

15 In *Grossman*, the Circuit held that where a police officer had probable cause  
16 to arrest someone under a statute that a reasonable officer could believe is  
17 constitutional, the officer will be immune from liability even if the statute is later  
18 held to be unconstitutional. *Id.* at 1209. The Circuit recognized, however, that  
19 where a statute authorizes official conduct which is patently violative of  
20 fundamental constitutional principles, an officer enforcing that statute is not  
21 entitled to qualified immunity. *Id.* at 1210. Notably, in *Grossman*, the Circuit  
22 referred to historical events such as the Holocaust and the My Lai massacre as  
23 examples where individuals cannot always be held immune for the results of their  
24 official conduct simply because they were enforcing policies or orders promulgated  
25 by those with superior authority. *Id.*

26 In viewing the facts in the light most favorable to Plaintiff, the Court does  
27 not find that the court pickup order authorized conduct that was patently violative  
28 of fundamental constitutional principles. As a result, Defendant Fields is entitled

1 to qualified immunity for her role in executing the court pickup order.

2 Plaintiffs also urge this Court to reconsider its ruling that Defendant Fields is  
3 entitled to absolute immunity with respect to the claim that she violated their  
4 procedural due process rights by failing to give them adequate notice. The Court  
5 concludes that providing notice is part of the traditional functions of an advocate in  
6 a criminal prosecution, and, as such, Defendant Fields is entitled to absolute  
7 immunity.

8 Accordingly, **IT IS HEREBY ORDERED:**

9 1. Plaintiff's Motion for Reconsideration (Ct. Rec. 88) is **DENIED**.

10 **IT IS SO ORDERED.** The District Court Executive is directed to enter  
11 this Order and forward copies to counsel.

12 **DATED** this 9<sup>th</sup> day of March, 2007.

13 *S/ Robert H. Whaley*

14 **ROBERT H. WHALEY**  
15 Chief United States District Judge

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